

Remarks

A. Period For Reply

A shortened statutory period was set to expire three months from the Office Action of November 1, 2005. November 1, 2005 plus three months was February 1, 2006. This Amendment and Remarks is being filed on or before Monday, May 1, 2006 with a petition for a three month extension of time.

B. Status

The outstanding Office Action was nonfinal.

C. Disposition Of Claims

Claims 1-5, 7-8, 12-13, 15-18, 24-25, and 27-28 are pending.

D. Application Papers

Approval of the formal drawings at the appropriate time would be appreciated.

E. Priority under 35 U.S.C. §§ 119 and 120

As to domestic priority, this case claims the benefit of U.S. Provisional Application Number 60/407,369 filed August 30, 2002 through U.S. Patent Application Number 10/652,296 filed August 29, 2003. Acknowledgement of this claim for domestic priority would be appreciated.

F. Attachments

Applicant filed one PTO-1449 form with the filing of this case on April 7, 2005, one PTO-1449 form on January 2, 2005, and two PTO-1449 forms on October 5, 2005. These PTO-1449 forms have been signed and the references on these

forms have been initialed. This is very much appreciated.

It should be noted that an additional Information Disclosure Statement is being filed under separate cover on even date, i.e., May 1, 2006.

G. Basis for amendments to the claims

Independent claim 1 has been amended to include some of the limitations of dependent claim 3.

Independent claim 1 has further been amended to recite an upper portion of the frame extending to and between the side portions of the frame, a lower portion of the frame extending to and between the side portions of the frame, and tubing between the upper and lower portions and extending to and between the side portions of the frame. Basis for this amendment includes original claim 15 and further includes Figure 21 and its attendant description on pages 38-39 of the specification. Independent claims 7, 15, 27 and 28 have been similarly amended.

Independent claim 1 has been amended to, at one or more locations, delete "wall" and recite therefor "sheeting." Basis for "sheeting" includes page 38, line 12. Claims 7, 12, 15, 25, 27 and 28 have been similarly amended.

Independent claim 1 has been amended to, at one or more locations, delete "wall" and recite therefor "frame." Basis for such includes Figure 21 and its attendant description on pages 38-39 of the specification. Claims 7, 12, 15, 27 and 28 have been similarly amended.

Independent claim 1 has been amended to recite a counter member limitation. Basis for such includes original claim 6. Claim 7 has been similarly amended.

Dependent claim 2 has been amended to recite that the upper and lower portions of the frame comprise tubing. Basis for such is Figure 21 and its attendant description on

pages 38-39 of the specification.

Dependent claim 3 has been amended to recite a bed and bed rail combination. Basis for this limitation includes original claim 16 that relates the plane of the sleeping surface to tubing that lies in said plane. Claims 8 and 15 have been similarly amended.

Dependent claim 4 has been amended to recite a "fabricated predefined" acute angle. Basis for this limitation is paragraph [0130] of the specification (i.e., the paragraph bridging pages 32-33 of the specification). Since the acute angle is fabricated, it is predefined. Claims 5 and 7 have been similarly amended.

Claim 25 has been amended to substantially include the limitations of its base claim (claim 15) and dependent claim 26.

Basis for the amendment to claim 27 as to said quick connect includes claim 25.

Basis for the amendment to claim 28 as to said quick connect includes claim 26.

H. The Office Action

H.1. Section 1 of the Office Action

In section 1 of the Office Action, claim 26 was objected to. It was indicated that the dependency of claim 26 should be changed to claim 25. As to such, it should be noted that claim 25 now includes substantially all of the limitations of its base claim 25 and all of the limitations of claim 26, which has been indicated as being allowable.

H.2. Section 2 of the Office Action

In section 2 of the Office Action, a quotation of 35 U.S.C. 102 was set out.

H.3. Section 3 of the Office Action

In section 3 of the Office Action, claims 1-3, 7, 8, 15-18, 25, 27 and 28 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,596,776 to Huang.

Huang is entitled Collapsible Safeguard Rail Structure and is for a cot or playpen for protecting babies therein. Please see column 2, lines 18-19. Huang shows two rails extending to and between side members of its rail structure. Huang makes no teaching as to any of the rails being in the plane of a sleeping surface. Nor does Huang make any teaching as to the rails being vertically adjustable in height to take into account sleeping surfaces of different height.

In contrast, claim 1 now includes the limitation of an upper portion, a lower portion and a rigid component comprising tubing, with each of said three elements extending to and between side portions of the frame. On this first ground, Huang respectfully does not anticipate claim 1.

Further in contrast, claim 1 now includes the limitation of a counter member engaged to the leg portion and adapted for engaging the second side of the bed to keep the rail portion hugging the first side of the bed. On this second ground, Huang respectfully does not anticipate claim 1.

As to independent claim 7, the above noted first and second grounds of argument are relevant.

Further as to independent claim 7, this claim includes the limitation of a fabricated predefined acute angle. On this third ground, Huang respectfully does not anticipate claim 7.

As to independent claim 15, the above noted first

ground of argument is relevant.

Further as to independent claim 15, Huang makes no teaching of the tubing being in the plane of the sleeping surface. In this combination claim, applicant positively recites such a feature. On this fourth ground, Huang respectfully does not anticipate claim 15.

As to independent claim 27, the above noted first ground of argument is relevant.

Further as to independent claim 27, it is respectfully submitted that the connections of Huang between the rails and the side members are not quick connects. Applicant claims such a feature in claim 27. On this fifth ground, Huang respectfully does not anticipate claim 27.

As to independent claim 28, the above noted first ground of argument is relevant.

Further as to independent claim 28, it is respectfully submitted that Huang includes no quick connects for vertical adjustment of the rails along the side members. Applicant positively recites such a feature in claim 28. On this sixth ground, Huang respectfully does not anticipate claim 28.

H.4. Section 4 of the Office Action

In section 4 of the Office Action, claims 1, 4, 6, 27 and 28 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,640,726 to Fichner-Rathus.

The Fichner-Rathus reference shows an upper element to its frame and a lower element to its guard rail, where each of the elements extends to and between each of the side elements of the guard rail. There is no tubing or rigid element between the upper and lower elements and extending to the side elements.

In contrast, claim 1 now includes the limitation of an

upper portion, a lower portion and a rigid component comprising tubing, with each of said three elements extending to and between side portions of the frame, and with the tubing being disposed between the upper and lower portions. On this first ground, the Fichner-Rathus reference respectfully does not anticipate claim 1.

As to dependent claim 4, this claim now includes the limitation of a fabricated predefined acute angle. The Fichner-Rathus reference discloses a wing nut; the Fichner-Rathus reference does not teach a fabricated predefined acute angle. On this second ground, the Fichner-Rathus reference cannot anticipate dependent claim 4.

As to independent claim 27, the above noted first ground of argument is relevant.

As to independent claim 28, the above noted first ground of argument is relevant.

H.5. Section 5 of the Office Action

In section 5 of the Office Action, claims 1, 2, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 329,663 to McMurray.

McMurray discloses three horizontal bars or slats that are attached to upright strips. Folding arms are hinged to the uprights by hinges. The arms are placed between two mattresses or directly above springs or directly above slats. The McMurray reference does not disclose a counter engaged to its arm or arms.

In contrast, claim 1 now includes the limitation of a counter member engaged to the leg portion and adapted for engaging the second side of the bed to keep the rail portion hugging the first side of the bed. On this first ground, McMurray respectfully does not anticipate claim 1.

As to claim 27, this claim includes the limitation of a

quick connect between said rigid component and said side portion of the frame such that the rigid component can be readily set up and readily broken down. McMurray does not teach such. On this second ground, McMurray respectfully does not anticipate claim 27.

As to claim 28, this claim includes the limitation of a quick connect between said tubing and said side portion such that said tubing is adjustable in height for sleeping surfaces of different heights. McMurray does not teach such. On this third ground, McMurray respectfully does not anticipate claim 28.

Still further, as to each of claims 1, 27 and 28, sheeting is positively recited. McMurray does not teach such. On this fourth ground, McMurray respectfully does not anticipate claim 1.

H.6. Section 6 of the Office Action

In section 6 of the Office Action, a quotation of 35 U.S.C. 103(a) was set forth.

H.7. Section 7 of the Office Action

In section 7 of the Office Action, claims 3, 5, 7-13, 15-18 and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fichner-Rathus '726 in view of Huang '776.

As to independent claim 1, the references of Fichner-Rathus and Huang, even if combined, do not teach the positively claimed limitation of an upper portion, a lower portion and a rigid component comprising tubing, with each of said three elements extending to and between side portions of the frame, and with the tubing being disposed between the upper and lower portions. On this first ground, it is respectfully submitted that independent claim 1 (and thus its dependent claims too) is allowable over such a

combination.

As to dependent claim 3, the references of Fichner-Rathus and Huang, even if combined, make no teaching of tubing being in or close to the plane of a sleeping surface. This combination claim positively recites such a feature. On this second ground, it is respectfully submitted that dependent claim 3 is allowable.

As to independent claim 7, the above noted first ground of argument is relevant.

Further as to independent claim 7, the references of Fichner-Rathus and Huang, even if combined, do not teach the positively recited limitation of the fabricated predefined acute angle. On this third ground, it is respectfully submitted that independent claim 7 (and thus its dependent claims too) is allowable over such a combination.

As to dependent claim 8, the above noted second ground of argument is relevant.

As to independent claim 12, the above noted third ground of argument is relevant.

As to independent claim 15, the above noted first and second grounds of argument are relevant.

As to dependent claim 25, it is respectfully submitted that the Huang reference does not show a quick connect between its horizontal elements and side elements.

H.8. Section 8 of the Office Action

In section 8 of the Office Action, claim 24 was rejected under 35 U.S.C. 103(a) as being unpatentable over a number of combinations of references. Claim 24 is dependent upon independent claim 15. As to independent claim 15, it is respectfully submitted that claim 15 is allowable for the reasons noted above in section H.7. of this paper.

H.9. Section 9 of the Office Action

In section 9 of the Office Action, claim 26 was objected to, but it was stated that this claim would be allowable if rewritten to correct an informality and if rewritten in independent form including all of the limitations of the base claim and any intervening claims. This indication of allowability is very much appreciated.

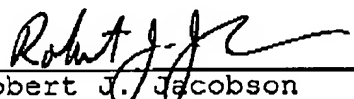
As to such, claim 25 now includes the limitations of former base claim 15, former dependent claim 25 and former dependent claim 26, except that "sheeting" is recited instead of "wall" in one instance and "frame" is recited instead of "wall" in another instance.

I. Conclusion

Applicant respectfully submits that the present application is now in condition for allowance. The Examiner is respectfully invited to make contact with the undersigned by telephone if such would advance prosecution of this case.

Respectfully submitted,

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